

## REMARKS

### INFORMATION DISCLOSURE STATEMENT

Applicants submit herewith a legible copy of each foreign patent document cited and each non-patent literature cited in the Information Disclosure Statement submitted on December 30, 2005. Accordingly, the Information Disclosure Statement submitted on December 30, 2005 is now in full compliance with 37 C.F.R. 1.98(a)(2).

### DRAWINGS

Amended formal drawings for FIGS. 12, 13, 14, 15 and 17 are submitted herewith. Applicants amend FIGS. 12, 13, 14 and 15 to remove existing errors.

Applicants also amend FIG. 17 to comport with 37 C.F.R. 1.83(a). Applicants note that the claimed invention's disclosure of having the thickness of the undulating regions of the graft being greater than that of the non-undulating regions is supported by originally filed claims 5 and 6. The formal drawing of FIG. 17 submitted on August 24, 2006 is inaccurate in that it depicts the undulating regions of the graft as having the same thickness as the non-undulating regions. Applicants note that this inaccuracy was completely unintentional and express thanks to the Examiner for noticing the inaccuracy. In accordance with the Examiner's remarks, Applicants amend the formal drawing version of FIG. 17 to show the thickness of the non-undulating regions of the graft as being greater than that of the undulating regions. Because this feature is disclosed in the originally filed claims 5 and 6, no new matter has been introduced.

With regard to the Examiner's objection to the "suturing openings as cruciform or generally Y-shaped slots" features recited in claims 9 and 10, Applicants amend FIG. 16 to now illustrate these features. Support for suturing openings having a generally cruciform-shaped or a Y-shaped slot pattern can be found in originally filed claims 9 and 10. Applicants' amendment renders moot the Examiner's objection.

## CLAIMS

Claims 1-8 and 11-16 are currently pending in the application. In the Non-Final Office Action of April 27, 2006, the Examiner rejects pending claims 1-16 on various grounds.

The rejections to claims 1-8 and 11-16 are traversed. Applicants respond to the anticipation rejection as subsequently recited herein, and respectfully request reconsideration and further examination of the present application under 37 C.F.R. §1.112.

A. Applicants traverse the Examiner's rejection of pending claims 1-4 and 13-15 under 35 U.S.C. § 102(b) as being anticipated by WO 01/74274 A2 to Palmaz et al.

Applicants have thoroughly considered the Examiner's remarks concerning the patentability of claims 1-4 and 13-15 and are very familiar with WO 01/74274 A2 to Palmaz et al. (hereinafter referred to as "the '274 publication"). In fact, Dr. Palmaz is a co-inventor of both the claimed invention described in the pending application and the invention described in the '274 publication, which is the PCT publication of U.S. Patent Application No. 09/532,164, now U.S. Patent No. 6,537,310. U.S. Patent Application No. 09/532,164 is listed in the "Cross Reference to Related Applications" section of the pending application as a related commonly assigned application.

For this 35 U.S.C. §102(b) rejection to be proper, each and every element of the claims must be disclosed in as great detail by the reference as claimed in the claims. *See* MPEP §2131; see also *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989) (holding that "[t]he *identical* invention must be shown in as complete detail as is contained in the ... claim." [Emphasis added]); see also *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987) (stating that anticipation requires that "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference"). Additionally, while an identity of terminology is not required, the elements must nonetheless be arranged as required by the claim. *See*

*In re Bond*, 910 F.2d 831, 832-833 (Fed. Cir. 1990) (holding that anticipation can not be established by mere equivalents).

Applicants respectfully traverse this anticipation rejection because the '274 publication does not disclose "at least a portion of the body member having a plurality of *circumferential undulations* formed in each of the luminal wall and abluminal wall surfaces of the body member" [Emphasis added], as recited in claim 1. These circumferential undulations are shown in FIG. 11 and FIG. 12 below. As commonly understood by those skilled in the art, the term "undulation" means having a wavy form. The online dictionary <www.dictionary.com> defines the term undulation as "[a] wavelike form, outline, or appearance." The online dictionary <www.dictionary.com> also defines the term wavy as "[ha]ving curls, curves, or undulations." Simply put, to those skilled in the art, the term undulation infers curves or a curve-like appearance. As shown below in FIG. 11 and particularly in FIG. 12 of the pending application, portions of the claimed invention's graft body member 62 clearly possess undulations.

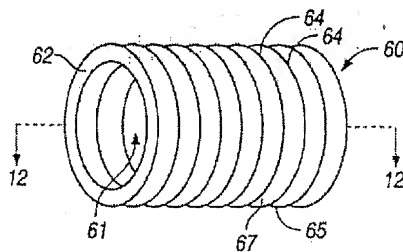


Fig. 11

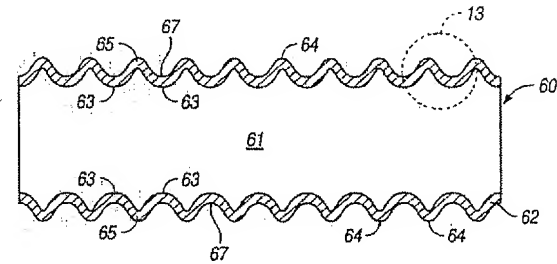
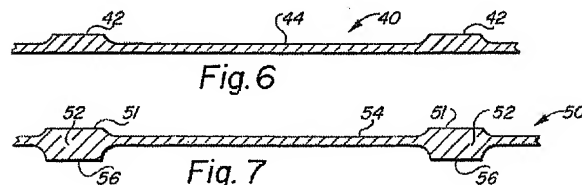
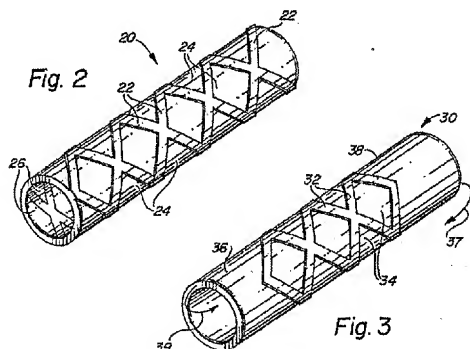


Fig. 12

By contrast, the web-stents described in the '274 publication do not disclose of having undulations. By comparing FIG. 11 (shown above) of the pending application to FIGS. 2 and 3 (shown below) of the '274 publication, it is abundantly clear to those skilled in the art that the graft described in the pending application is structurally different from the web-stent described in the '274 publication. Moreover, it is also quite clear, from comparing FIG. 12 (shown above) of the pending application to FIGS. 6 and 7 (shown below) of the '274 publication, that the luminal and abluminal wall surfaces of

the claimed invention incorporates circumferential undulations (as commonly understood by those skilled in the art), while the invention described in the '274 publication does not.



Accordingly, Applicants submit that the Examiner's anticipation rejection based on the '274 publication is improper.

To further clarify the claimed invention, Applicants amend claims 1 and 13 to describe the "continuous" and "peaks and valleys" characteristics of the circumferential undulations disclosed in the claimed invention. The above-described amendments are made for the sole purpose of expediting prosecution of the pending application. Because the '274 publication does not disclose circumferential undulations, let alone continuous ones, Applicants kindly request that the anticipation rejection of claims 1-4 and 13-15 be withdrawn.

B. Applicants traverse the Examiner's rejection of: pending claims 5, 12 and 16 under 35 U.S.C. §103(a) as being unpatentable over the '274 publication in view of U.S. 6,974,471 to Van Schie et al; pending claims 6-8 as being unpatentable over the '274 publication in view of U.S. 6,974,471 and U.S. 6,325,825 to Kula et al.; and pending claim 11 as being unpatentable over the '274 publication in view of U.S. 5,749,880 to Banas.

As discussed above, with regard to traversal of the rejection under 35 U.S.C. §102(b), the '274 publication does not teach or suggest all of the limitations of claims 1 and 13, and cannot therefore, by itself, provide the proper basis for rendering obvious any claims depending from claim 1. See MPEP 2143.03; see also *In re Royka*, 490 F.2d 981,

982 (C.C.P.A. 1974) (concluding that to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art); *see also In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988) (holding that if an independent claim is nonobvious under 35 U.S.C. 103, the claims dependent therefrom are also nonobvious). Thus, because none of the cited art of record teach of the “circumferential undulation” limitation featured in the claimed invention, pending dependent claims 2-8, 11-12, and 14-16 are also distinguished from the art cited and of record.

#### EXAMINER INTERVIEW

Applicant expresses thanks to the Examiner for his graciousness in taking the time to interview the undersigned on August 14, 2006. During the interview, the undersigned presented the very arguments set forth in this Response. The Examiner acknowledged that the disclosed embodiment illustrated in FIG. 11 of the pending application appeared structurally different from that illustrated in FIGS. 2 and 3 of the ‘274 publication. The interview concluded with the Examiner agreeing to undertake a review of Applicant’s Response to the Office Action. In view of this, Applicant submits that amended claim 1 is patentable over the art cited and of record.

#### Summary

The Examiner’s rejections of claims 1-8 and 11-16 have been obviated by the above remarks. In addition, the drawing error that that formed the basis for the Examiner’s objection has been corrected. The specification has also been amended to correct for informalities. Accordingly, Applicants submit that the pending claims are patentably distinct from and over the art cited and of record. Favorable reconsideration of the rejection of the pending claims is solicited.

Any amendments made during the prosecution of this application are intended solely to expedite prosecution of the application and are not to be interpreted as acknowledgement of the validity of any rejection raised earlier in prosecution, nor as

acknowledgement that any citation made against the application is material to the patentability of the application prior to amendment.

This Paper is being concurrently filed with an Amendment Transmittal, which includes a fee calculation sheet and any applicable requests for Extension of Time. Other than those stated in the Amendment Transmittal, no additional fees are believed necessitated by the filing of this Paper. Should any such additional fees be required, the Director is hereby authorized to deduct them from Deposit Account No. 18-2000, of which the undersigned is an authorized signatory.

Should the Examiner believe that there are any outstanding matters capable of resolution by a telephone interview, the Examiner is encouraged to telephone the undersigned attorney of record.

Respectfully submitted



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Docket No. 6006-157

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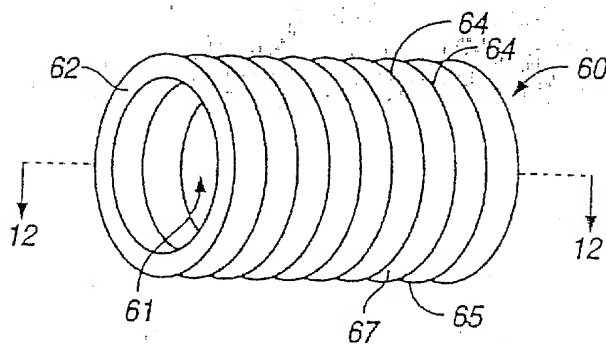


Fig. 11

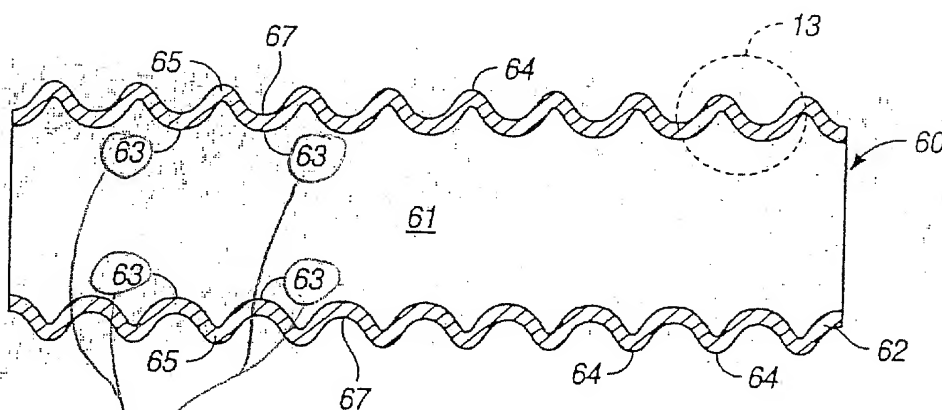


Fig. 12

delete  
 reference  
 number 63

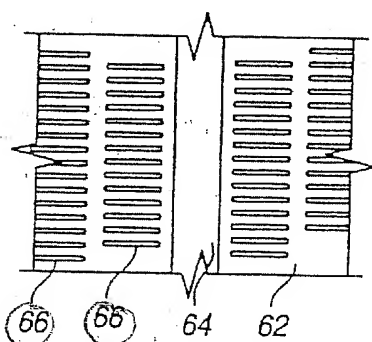
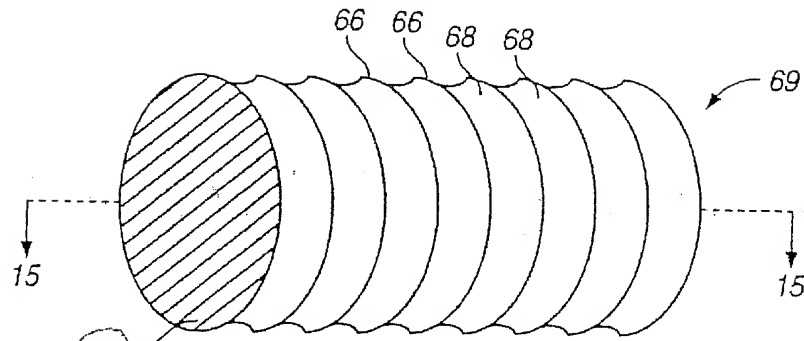


Fig. 13

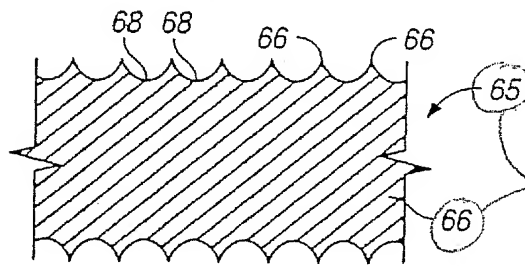
replace reference  
 number 66 with  
 reference number 266

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*Fig. 14*

delete  
reference number 66



delete reference  
number 65

*Fig. 15*



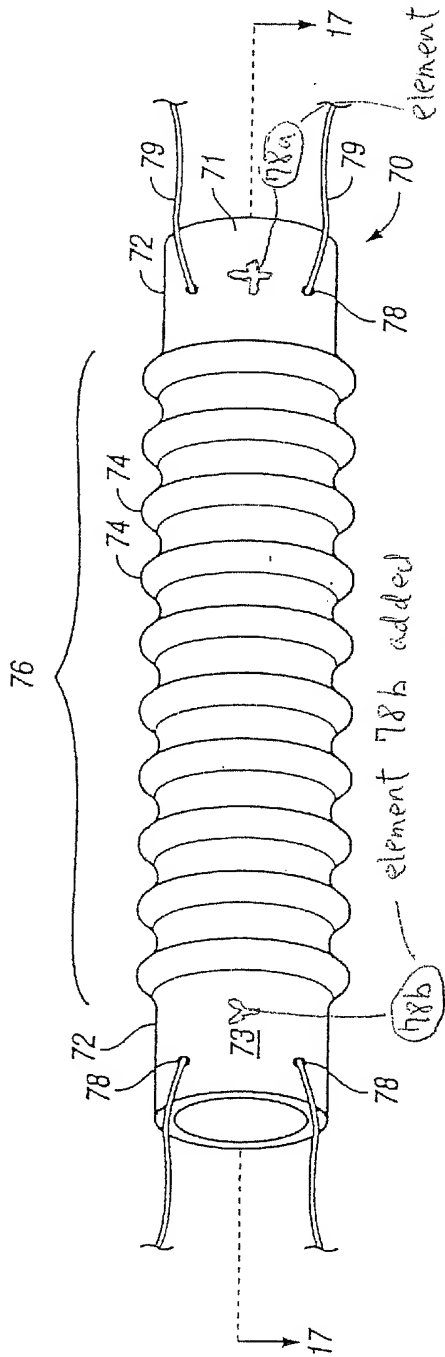


Fig. 16

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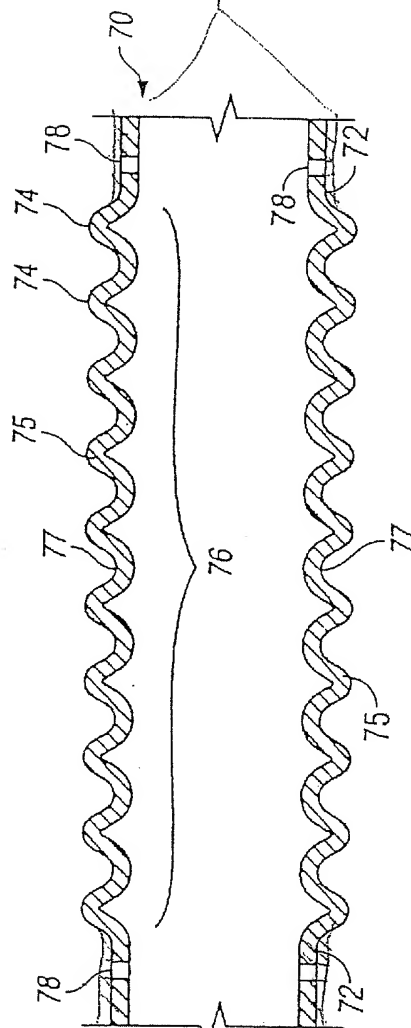


Fig. 17